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November 25, 1998

**BY HAND DELIVERY**

Magalie R. Salas, Esquire  
Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, DC 20554

Re: Opposition to Statement for the Record  
MM Docket No. 98-155  
RM-9082; RM-9133

Dear Ms. Salas:

Transmitted herewith on behalf of Chisholm Trail Broadcasting Co., Inc., licensee of Station KXLS(FM), Alva, Oklahoma, is an original and four copies of its "Opposition to Statement for the Record," filed in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate directly with this office.

Very truly yours,  
FLETCHER, HEALD & HILDRETH, P.L.C.



Andrew S. Kersting  
Counsel for Chisholm Trail  
Broadcasting, Co., Inc.

**Enclosure**

cc (w/ encl.): Certificate of Service (by hand & first-class mail)  
Mr. Dennis Williams (FCC) (by hand)  
Mr. Glenn Greisman (FCC) (by hand)

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BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C. 20554

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**NOV 25 1998**  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 98-155
Table of Allotments,	)	RM-9082
FM Broadcast Stations	)	RM-9133
(Alva, Mooreland, Tishomingo, Tuttle,	)	
and Woodward, Oklahoma)	)	

To: Chief, Allocations Branch

**OPPOSITION TO STATEMENT FOR THE RECORD**

Chisholm Trail Broadcasting Co., Inc. ("Chisholm"), licensee of Station KXLS(FM), Alva, Oklahoma, by counsel, hereby opposes the "Statement for the Record," filed November 18, 1998 ("Statement"), by Ralph Tyler ("Tyler") in the above-captioned proceeding. In support of this opposition, the following is stated:

Tyler filed his Statement apparently in response to Chisholm's Reply Comments and Supplement to Reply Comments ("Supplement"), which were filed in this proceeding on November 3 and November 12, 1998, respectively. In his Statement, Tyler states the following:

Chisholm Trail's combined Reply exceeds 90 pages in length, includes a complex engineering statement, and makes numerous allegations in connection with KTSH(FM). Mr. Tyler intends to seek leave to file a response to the Reply to respond to the allegations and certain new matters to which Mr. Tyler has had no opportunity to respond. Counsel believes a response can be filed by December 14, 1998.

Tyler Statement, p. 1. Tyler claims that he selected the December 14, 1998, “deadline” because of the Thanksgiving holiday period and the time necessary to prepare a response. *Id.* at 1-2.

Chisholm opposes Tyler’s Statement because any “response” by Tyler to Chisholm’s Reply Comments and Supplement would constitute an unauthorized pleading under Section 1.415 of the Commission’s rules. *See* 47 CFR §1.415.

Chisholm is at a loss to understand Tyler’s allegation that Chisholm’s reply pleadings “exceed 90 pages in length.” Chisholm’s Reply Comments and Supplement are 21 pages and 4 pages in length, respectively. Moreover, Chisholm’s Reply Comments clearly noted that its counsel had attempted to obtain a copy of any request that Tyler might have filed with the FCC requesting authority for KTSH to remain off the air. *See* Chisholm Reply Comments, p. 4, n.10, and p. 8. Chisholm’s Supplement merely addressed Tyler’s October 27, 1998, request for continued silence authority.

Moreover, there is no material contained in the supporting exhibits to Chisholm’s Reply Comments or Supplement with which Tyler is not familiar. Exhibits A, C, and D to Chisholm’s Reply Comments relate directly to Station KTSH.<sup>1</sup> Exhibit E contains an engineering statement by William H. Nolan regarding his visits to the KTSH/KAZC transmitter site. As the licensee of Station KTSH(FM), Tishomingo, Oklahoma, Tyler undoubtedly is familiar with the KTSH/KAZC transmitter site and the operation of those stations. Finally, Exhibit F contains a mutual exclusivity analysis prepared by Mr. Nolan concerning the operation of Channel 259C3 at Tishomingo and

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<sup>1</sup> Exhibit A contains a copy of KTSH’s license application, filed August 20, 1996 (BLH-960820KA). Exhibit C contains a copy of Tyler’s letter to the FCC, dated October 1, 1998. Exhibit D contains a copy of the KTSH station license. The only attachment to Chisholm’s Supplement is a copy of Tyler’s October 27, 1998, request for continued silence authority.

Tuttle, Oklahoma. Tyler certainly would have conducted a similar study before filing his rulemaking petition in this proceeding because he has relied upon Section 1.420(i) of the Commission's rules in seeking the reallocation of Channel 259C3 from Tishomingo to Tuttle.<sup>2</sup>

The only exhibit to Chisholm's Reply Comments which does not relate directly to Station KTSH is Exhibit B, which contains a copy of certain portions of the engineering section of South Central Oklahoma Christian Broadcasting, Inc.'s ("South Central") construction permit application for Station KAZC (File No. BPED-970127MD). However, Tyler undoubtedly is familiar with this application as well because he relied on its existence to support his rulemaking petition prior to the time that KAZC commenced operation.<sup>3</sup> In addition, not only is KAZC co-located with KTSH, but Tyler's engineer, Randall Mullinax, prepared the engineering portion of KAZC's license application (File No. BLED-981002KA).<sup>4</sup> Therefore, because Tyler is familiar with each of the exhibits attached to Chisholm's reply pleadings, Tyler's claim regarding the length of Chisholm's reply pleadings has no basis in fact.

Furthermore, the only "new matters" contained in Chisholm's reply pleadings relate directly to the allegations contained in the "Comments of Ralph Tyler," filed October 19, 1998 ("Tyler Comments"). Indeed, the primary argument contained in Tyler's Comments is that KAZC has

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<sup>2</sup> Section 1.420(i) of the rules requires the proposed new allotment to be mutually exclusive with the petitioner's existing channel assignment. 47 CFR §1.420(i).

<sup>3</sup> See, e.g., Tyler's Request for Rule Making and Order to Show Cause, p. 3, filed March 21, 1997; Tyler's Opposition to Motion to Dismiss, p. 3, filed July 9, 1997.

<sup>4</sup> See Chisholm Reply Comments, p. 5, n.14, citing Comments of Ralph Tyler, Attachment (containing a copy of KTSH's license application).

commenced program tests and that South Central has filed a license application for that facility.<sup>5</sup> The facts and legal arguments contained in Chisholm's Reply Comments and Supplement are directly related to KAZC's commencement of on-air operation.

Finally, Tyler's selected "deadline" of December 14, 1998, for filing a response to Chisholm's reply pleadings is most curious. Why does Tyler require four and one-half weeks<sup>6</sup> to respond to the factual statements and photographs contained in Chisholm's reply pleadings, which do nothing more than demonstrate to the Commission the steps that Tyler took in order to get KAZC on the air? Indeed, the only reason Tyler has filed his Statement<sup>7</sup> is that he needs time to fabricate some plausible explanation -- which undoubtedly will involve lining-up witnesses who are under his influence or control -- in order to try and rebut the clear, convincing evidence presented in Chisholm's reply pleadings that Tyler is guilty of fraud and misrepresentation.

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<sup>5</sup> Tyler's Comments include a copy of South Central's letter to the FCC, dated September 29, 1998, notifying the Commission that KAZC had commenced program tests. Tyler also attached a copy of the KAZC license application, filed October 2, 1998 (File No. BLED-981002KA).

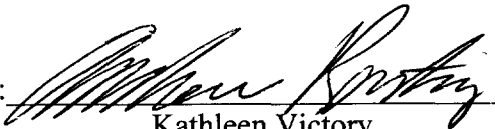
<sup>6</sup> December 14th is approximately four and one-half weeks after the filing of Chisholm's November 12, 1998, Supplement.

<sup>7</sup> In essence, Tyler's Statement is nothing more than a request for an extension to file an unauthorized pleading

WHEREFORE, in light of the foregoing, in the event Ralph Tyler elects to file a response to Chisholm's Reply Comments or Supplement to Reply Comments, any such pleading should be summarily DISMISSED as an unauthorized pleading.

Respectfully submitted,

CHISHOLM TRAIL BROADCASTING CO., INC.

By:   
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Its Counsel

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November 25, 1998

**CERTIFICATE OF SERVICE**

I, Judy Ryan, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that on this 25th day of November, 1998, copies of the foregoing "Opposition to Statement for the Record" were hand delivered or mailed first-class, postage pre-paid, to the following:

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